

MINUTES OF THE OPEN SESSION OF THE RHODE ISLAND ETHICS COMMISSION

February 8, 2011

The Rhode Island Ethics Commission held its 3rd meeting of 2011 at 9:00 a.m. at the Rhode Island Ethics Commission conference room, located at 40 Fountain Street, 8th Floor, Providence, Rhode Island, on Tuesday, February 8, 2011, pursuant to the notice published at the Commission Headquarters, the State House Library, and electronically with the Rhode Island Secretary of State.

The following Commissioners were present:

**Barbara Binder, Chair Deborah M. Cerullo, SSND
Ross E. Cheit, Vice Chair Edward A. Magro
J. William W. Harsch, Secretary Mark B. Heffner
James V. Murray John D. Lynch, Jr.
Frederick K. Butler**

Also present were Edmund L. Alves, Jr., Commission Legal Counsel; Kent A. Willever, Commission Executive Director; Katherine D'Arezzo, Senior Staff Attorney; Staff Attorneys Jason Gramitt, Dianne L. Leyden* and Amy C. Stewart; and Commission Investigators Steven T. Cross, Peter J. Mancini and Gary V. Petrarca.

At 9: 00 a.m. the Chair opened the meeting. The first order of business was a motion to approve the minutes of the Open Session held on January 25, 2011. Upon motion made by Commissioner Cerullo and duly seconded by Commissioner Lynch, it was

VOTED: To approve minutes of the Open Session held on January 25, 2011.

ABSTENTION: J. William W. Harsch and Mark B. Heffner.

The next order of business was advisory opinions. The advisory opinions were based on draft advisory opinions prepared by the Commission Staff for review by the Commission and were scheduled as items on the Open Session Agenda for this date. The first advisory opinion was that of George O. Steere, Jr., a member of the Gloucester Town Council. Staff Attorney Stewart presented the Commission Staff recommendation. The Petitioner was present.

***Staff Attorney Leyden arrived at 9:05 a.m.**

The Petitioner informed that he will need to obtain a building permit at a cost of \$150-\$170. He represented that his nearest neighbor is located 850 feet away and that he meets or exceeds the new requirements. In response to Commissioner Cheit, the Petitioner stated that the permit fee depends upon the value of the project, but it will not be impacted by anything that he might do.

In response to Commissioner Cheit, Staff Attorney Stewart indicated that the staff struggled with the class exception analysis under these facts. She noted that compliance issues could arise, as the Petitioner may need to make improvements to comply and obtain his permit. Commissioner Cheit commented that if there were some separation between the issues of existing and future uses the recommendation might be that, while he would need to recuse from consideration of existing uses, he could participate in consideration of future issues, which seems to be the real issue. The Petitioner indicated that the Council is trying to pass it as one ordinance. Commissioner Magro stated his belief that you cannot separate the two issues. Chair Binder voiced similar concerns, noting that the Petitioner would be making decisions as to whether or not existing uses should be grandfathered in. Commissioner Magro added that decisions regarding what types of fuel could be used would impact both current and future users. Commissioner Cheit stated that such a decision would involve a larger class. Upon motion made by Commissioner Magro and duly seconded by Commissioner Cerullo, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to George O. Steere, Jr., a member of the Gloucester Town Council.

Commissioner Cheit stated his belief that the issue is close but, given that both existing and future uses are being considered together, he

is voting to adopt the draft opinion.

The next advisory opinion was that of David A. D'Agostino, a member of the Scituate Town Council. Staff Attorney Stewart presented the Commission Staff recommendation. The Petitioner was present. The Petitioner advised that he has been recusing himself whenever issues involving Gorham & Gorham arise. In response to Commissioner Heffner, Staff Attorney Stewart stated that recusal would mean that the Petitioner could not participate in any matter impacting his son. In response to Commissioner Heffner, the Petitioner indicated that the name of the Town Solicitor is presented to the full Council for approval. He noted that Gorham & Gorham have served for so many years that their selection is almost automatic. The Petitioner advised that when he was elected he asked not to be appointed to any selection committee or subcommittee dealing with Gorham & Gorham. In response to Commissioner Heffner, the Petitioner confirmed that he refuses to participate in all matters involving Gorham & Gorham, both publicly and behind the scenes. Upon motion made by Commissioner Lynch and duly seconded by Commissioner Butler, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to David A. D'Agostino, a member of the Scituate Town Council.

The next advisory opinion was that of Frederick F. Tobin, Esq., the Town Solicitor for the Town of Coventry. Staff Attorney Stewart

presented the Commission Staff recommendation. The Petitioner was present. The Petitioner informed that he represented the School Department for about 20 years, until June 2009. He stated that last year was the first time the School Committee exercised its right to hire independent counsel by hiring the firm of Taylor Duane. In response to Commissioner Murray, the Petitioner stated that he does not have any business relationship with Taylor Duane as co-counsel on any cases. In response to Commissioner Cerullo, the Petitioner stated that he last represented the School Committee on June 29, 2009. In response to Commissioner Butler, the Petitioner informed that Edwards & Angell served as Solicitor during 2009-2010 and assigned a Solicitor to represent the School Committee.

In response to Commissioner Cheit, the Petitioner represented that he will not be providing legal services to the School Committee because 1) the provision of such services is not budgeted; and 2) there have been substantial conflict problems representing the differing interests of the Council and the School Committee. In response to Commissioner Cerullo, the Petitioner clarified that he served as Co-Solicitor with another attorney from 1986 to 1992, with one advising the Council and the other advising the School Committee. He stated that he served from 1992 to 2009 as Assistant Solicitor and, subsequently, was appointed Solicitor in November 2010. In response to Commissioner Heffner, the Petitioner informed that he is a solo practitioner who shares space and some expenses with another attorney, who is an Assistant Solicitor. Upon motion

made by Commissioner Cheit and duly seconded by Commissioner Lynch, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to Frederick F. Tobin, Esq., the Town Solicitor for the Town of Coventry.

The next advisory opinion was that of Paul Gonsalves, a Senior Planner at the Rhode Island Department of Administration, Division of Planning. Staff Attorney Stewart presented the Commission Staff recommendation. The Petitioner was not present. Commissioner Cerullo indicated her preference to ask questions of the Petitioner. She stated that she is troubled by the conclusion that the energy work he would be doing is not related to his state work. Staff Attorney Stewart advised that she had multiple telephone conversations with the Petitioner in which he repeated such representation. Commissioner Cheit stated that he also has questions for the Petitioner, and he inquired as to the fact that the Petitioner is seeking two part-time positions in addition to his state job. Commissioner Harsch asked that the matter be continued to the next meeting to allow the Petitioner to be present and answer questions. In response to Commissioner Harsch, Staff Attorney Stewart noted that the Petitioner was not provided with safe harbor and she stated that she would re-emphasize to the Petitioner that the draft opinion does not address any departmental or agency rules. This matter was continued to the next meeting.

The next advisory opinion was that of John T. Gannon, the Director of Administration for the City of Pawtucket. Staff Attorney Stewart presented the Commission Staff recommendation. The Petitioner was not present. Chair Binder expressed her discomfort with this request and commented that it presents an appearance of impropriety. She questioned how the Petitioner's step-daughter came to apply for the job and who developed the specifications. She indicated that the Petitioner should be present to answer questions. Commissioner Cerullo agreed. This matter was continued to the next meeting.

At 9:42 a.m. upon motion made by Commissioner Magro and duly seconded by Commissioner Murray, it was unanimously

VOTED: To go into Executive Session pursuant to R.I. Gen. Laws § 42-46-5(a)(2) and (4), to wit:

a.) Motion to approve minutes of Executive Session held on January 25, 2011.

**b.) In re: Bradford G. Marthens,
Complaint No. 2010-7**

**c.) In re: Maria Vallee,
Complaint No. 2010-9**

d.) Motion to return to Open Session.

The Commission returned to Open Session at 10:50 a.m. The Commission took a brief recess and reconvened at 10:54 a.m. The next order of business was a motion to seal the minutes of the Executive Session held on February 8, 2011. Upon motion made by Commissioner Cerullo and duly seconded by Commissioner Magro, it was unanimously

VOTED: To seal the minutes of the Executive Session held on February 8, 2011.

Chair Binder reported that the Commission took the following actions in Executive Session: 1) unanimously granted a first extension of time in In re: Bradford G. Marthens, Complaint No. 2010-7; 2) unanimously approved minutes of the Executive Session held on January 25, 2011, with one abstention; 3) denied Respondent's Motion to Intervene in In re: Maria Vallee, Complaint No. 2010-9, by a vote of 5 to 4; 4) unanimously denied a Motion to Quash and Objection to Subpoena in In re: Maria Vallee, Complaint No. 2010-9; and 5) unanimously granted the Prosecution's Motion to Compel Compliance with Subpoena in In re: Maria Vallee, Complaint No. 2010-9.

The next order of business was the Director's Report. Executive Director Willever reported that there are five complaints, thirteen

advisory opinions and one appellate litigation matter pending. He stated that the Commission received one formal APRA request since the last meeting, which was denied. He informed that staff remains busy with budget issues, lease negotiations and the education program.

The next order of business was a Legislative Update. Staff Attorney Gramitt informed that Representative Joseph M. McNamara introduced House Bill 5127, which mirrors legislation submitted for the past two years that was referred to committee and held for further study. He stated that it appears to be a revolving door provision that would expand the prohibitions to decision-making positions in the Department of Administration and perhaps the executive branch. He further stated that the legislation would potentially extend or shorten the revolving door time period until such time as a new governor is elected. He indicated that he would monitor the bill to see if it is clarified in the amendment process and report back to the Commission.

The next order of business was New Business. Chair Binder stated that she wanted to stay on top of the issue of the failure to adhere to an open and public bidding process constituting an appearance of impropriety. Commission Cheit stated that he would like the staff to consider cheating on a police exam as a potential violation of the Code of Ethics. He indicated that he is interested in how other jurisdictions address cheating by state employees.

At 11:00 a.m., upon motion made by Commissioner Lynch and duly seconded by Commissioner Butler, it was unanimously

VOTED: To adjourn.

submitted,

Respectfully

Harsch

J. William W.

Secretary